



CITY OF SAN JOSÉ, CALIFORNIA

200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

SAN JOSÉ ELECTIONS COMMISSION

Thomas Mertens, Chair
Fred deFuniak, Vice Chair
Steven C. Chell
Jang Badhesha
April Lin Walsh

SAN JOSÉ ELECTIONS COMMISSION MEETING MINUTES

MAY 31, 2006

I CALL TO ORDER

The Members of the San José Elections Commission convened at 6:05 p.m. in City Hall Wing, Committee Rooms W 118 and 119, 200 E. Santa Clara Street, San José, CA 95113.

PRESENT: COMMISSIONERS Badhesha, Chell, deFuniak, Walsh and Chair Mertens

ABSENT: COMMISSIONERS None

STAFF PRESENT: Lee Price, City Clerk
Senior Deputy City Attorney Norm Sato
Assistant City Clerk Nancy Alford
Evaluator Mike Moya

II OATH OF OFFICE – COMMISSIONER WALSH

Chair Mertens introduced new Commissioner, April Lin Walsh. City Clerk Lee Price administered the Oath of Office to Ms. Walsh.

III REPORT OF THE CHAIR

There was no report.

IV PUBLIC HEARINGS

- A. Hearing on the Independent Evaluator's Report and Recommendations on an anonymous complaint filed April 27, 2006 alleging that Mayoral Candidate Chuck Reed violated San José Municipal Code ethics regulations.

Documents Filed: 1) Anonymous complaint received April 27, 2006 alleging that Chuck Reed violated San José's Ethics Provision 12.06.235; 2) Correspondence dated April 28, 2006 from the City Clerk to Hansen Bridgett Marcus Vlahos Rudy LLP transmitting the complaint; 3) Letter to Chuck Reed dated May 26, 2006 providing notice of the meeting; 4) Report of the Independent Evaluator regarding the complaint filed against Chuck Reed; 5) Transcript of Hearing dated June 14, 2006. Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 23886; and 6) Resolution No. 2006-01 (A resolution of the San José Elections Commission of the City of San José making certain findings pursuant to Resolution No. 72547 of the council of the City of San José relating to the complaint against Chuck Reed for Mayor campaign).

Discussion:

Evaluator Mike Moye presented an oral report and responded to questions from the Commission. There was no testimony from either the Respondent or the Complainant. There were no public comments. Commission deliberations followed. (See Reporter's Transcript of Hearing dated June 14, 2006. Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 23886 Pages 1 through 13).

Actions:

On motion by Commissioner deFuniak, seconded by Commissioner Badhesha and carried, the Commission accepted the Evaluator's Report and Recommendations and dismissed the complaint.

Senior Deputy City Attorney Sato requested that each commissioner certify that he/she reviewed the entire record and evidence in this case and based his/her decision on the review. Each commissioner so certified.

On motion by Commissioner Chell and seconded by Commissioner Badhesha, the Commission authorized the City Attorney to prepare a resolution of the findings made and authorized the Chair to sign it.

- B. Hearing on Independent Evaluator's Report and Recommendations on a complaint filed May 17, 2006 alleging that the San José Chamber of Commerce violated San José Municipal Code ethics regulations.

Documents Filed: 1) Complaint filed by Steve Preminger received May 17, 2006 alleging that the San José Chamber of Commerce violated San José Municipal Code ethics regulations ; 2) Correspondence to Joan Cassman of Hanson Bridgett Marcus Vlahos Rudy LLP dated May 18, 2006 forwarding the complaint

filed with San José Elections Commission on May 17, 2006; 3) Letters to parties dated May 26, 2006 providing notice of the meeting; 4) Letter from James Sutton, representing the Respondent, dated May 31, 2006 requesting an extension of the hearing date; 5) Report of the Independent Evaluator regarding the complaint filed by Steven Preminger against San José/Silicon Valley Chamber of Commerce; 6) Transcript of Hearing dated June 14, 2006. Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 23886; 7) Correspondence from Steven Preminger dated May 30, 2006; 8) Second correspondence from Steven Preminger dated May 20, 2006; 9) Correspondence from Barry Del Bueno dated May 31, 2006; 10) Correspondence from Jaime Alvarado, Tamara Alvarado, Alejandra Arostegui, Daisy Chu, Kansen Chu, Cathy Deppe, Carol Garvey, Victor Garza, Joan Goddard, Ashu Kalra, Richard Konda, Bobby Lopez, Mohinder Mann, and Bui Thai dated May 31, 2006; and 11) Correspondence with attachments from J. Manuel Herrera dated May 31, 2006.

James Sutton, representing the Respondent, requested a continuance and spoke to the merits of the request.

Action: Upon motion by Commissioner deFuniak, seconded by Commissioner Chell, the Commission denied the request for a continuance and moved to hear the matter as scheduled.

Chair Mertens outlined the hearing procedures. Evaluator Mike Moyer presented an oral report and responded to questions from the Commission. Sworn testimony was received from representatives of the Respondent, the Complainant and other witnesses as described in the Reporter's Transcript. (See Reporter's Transcript of Hearing dated June 14, 2006. Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 23886 Pages 13 through 121).

Actions:

On motion by Commissioner Chell, seconded by Commissioner Badhesha, the Commission dismissed the part of the complaint that alleges that mailers sent out by COMPAC were independent expenditures, in accordance with the Evaluator's Report. Motion passed 4:1 with Commissioner deFuniak opposed.

On motion by Commissioner Chell, seconded by Commissioner Badhesha, the Commission found the part of the complaint that alleges a violation occurred by failing to report independent expenditures moot, in accordance with the Evaluator's Report. Motion passed 4:1 with Commissioner deFuniak opposed.

On motion by Commissioner Chell, seconded by Commissioner Badhesha, the Commission unanimously concluded that the Respondent was subject to the Municipal Code Section 12.06.310, contribution limitations for mailers, and further that the Respondent failed to comply with those limitations, in accordance with the Evaluator's Report.

On motion by Commissioner Badhesha, seconded by Commissioner deFuniak, the Commission unanimously agreed: 1) to table a decision to impose a penalty pending additional research by the Evaluator needed to determine the number of violations and 2) prepare a statement of reprimand.

On motion by Commissioner Chell, seconded by Commissioner Badhesha, the Commission directed the Evaluator to proceed with additional investigations to determine the potential number of violations.

Senior Deputy City Attorney Sato requested that each commissioner certify that he/she reviewed the entire record and evidence in this case and based his/her decision on the review

On motion by Commissioner Chell and seconded by Commissioner Badhesha, the Commission authorized the City Attorney to prepare a resolution of the findings made and authorized the Chair to sign it.

By mutual agreement, a subcommittee of Commissioners deFuniak and Walsh was formed to develop a draft statement of reprimand for consideration by the Commission at the next meeting.

V DISCUSSION ITEMS

- A. Update regarding proposal for public financing of city council and mayoral campaigns in San José.

No discussion; matter continued to the next meeting.

- B. Commission Subcommittee Update on the City's Current Lobbyist Ordinance and discussion of definition and/or application of "intermediary."

No discussion; matter continued to the next meeting.

VI MEETING SCHEDULE

The Commission tentatively agreed to meet again on either June 14 or 15th and requested that the City Clerk coordinate and confirm the next meeting date/time.

VII PUBLIC COMMENTS

Erik Larsen asked when the Commission was expected to take action on the reprimand and encouraged the Commission to move swiftly.

Harvey Darnell commended the Commission for their actions relating to the COMPAC complaint and urged the Commission to send a recommendation to the City Council to clarify the City's campaign regulations to ensure fair elections.

VIII ADJOURNMENT

The meeting was adjourned at 9:15 p.m.

THOMAS M. (TOM) MERTENS, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION